



STATEMENT OF CONSIDERATION
Relating to 301 KAR 2:300
(Not Amended After Comments)

I. The public hearing on 301 KAR 2:300, scheduled for May 21, 2015, at 9 a.m. in the Commission Room at the Kentucky Department of Fish and Wildlife Resources was cancelled; however, written comments were received during the public comment period.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Pamela Rogers, Kentucky State Director	The Humane Society of the United States

III. The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>
Mark Cramer, Wildlife Program Coordinator
Steven Dobey, Black Bear Program Coordinator

IV. Summary of Comments and Responses

(1) Subject Matter: Potential for overharvest of black bears.

Commenter: Pamela Rogers

1. (a) Comment: Even light exploitation could significantly reduce Kentucky's two subpopulations of bears, creating a genetic bottleneck that could lead to a second Kentucky black bear extinction.

(b) Response: "Light exploitation" is a vague term and therefore open to a wide array of debate. The currently proposed season structure would allow a possible legal harvest of 35 bears or 20 female bears within a year. The Department considers this a conservative quota across the 16-county bear zone. For example, in 2014, the season concluded with a harvest of 21 bears, which averages to only 1.3 bears killed per county within the 4.5-million acre bear zone. Existing and currently proposed harvest levels will not deleteriously impact the genetics of the population, as Hast (2010) and Murphy et al. (2015) documented that both Kentucky populations have genetic origins from bears in neighboring states. As bear populations in West Virginia, Virginia, and Tennessee continue to expand there will be immigrants into Kentucky that will provide genetic input to the eastern Kentucky and Big South Fork bear populations. Currently there are no data

available to suggest that interstate movement by bears within this remote Southern Appalachian region could be limited. Bear hunting will not lead to the extirpation of black bears in Kentucky, and the Department will continue to manage this important game species for long-term sustainability.

(2) Subject Matter: Reporting times for harvesting a black bear in Kentucky.

Commenter: Pamela Rogers

1. (a) Comment: Kentucky should change the reporting time from 24 hours after killing a bear to 12 hours, so as to avoid dangerous quota overruns.

(b) Response: The 24-hour requirement referenced by Ms. Rogers is not a reporting time. Rather, the regulation requires that successful bear hunters contact the Department within 24 hours to arrange for a physical check of the bear by Department personnel. This requirement applies to the archery/crossbow season, bear quota hunt with dogs season, and the proposed youth-only season. Successful hunters during those seasons are required to telecheck their bear by 8:00 p.m. E.S.T. on the day the bear was harvested; this requirement allows the Department to have an accurate count of bears harvested after legal hunting hours have closed each day. Hunters during the modern gun season are required to bring all harvested bears immediately to a Department-operated check station immediately after leaving the field. The existing reporting system, in conjunction with conservative harvest quotas, has maintained harvest levels well within the means necessary to prevent excessive harvest.

(3) Subject Matter: Future persistence of Kentucky's black bear populations.

Commenter: Pamela Rogers

1. (a) Comment: Black bears in Kentucky have only modestly recovered after centuries of persecution; they must be given the utmost consideration if they are to persist for future generations.

(b) Response: Black bears in Kentucky have not been subjected to centuries of "persecution". Black bear abundance throughout the eastern U.S. declined significantly due to a combination of habitat loss/change and unregulated harvest. That scenario was not a directed assault on black bears, but an unfortunate consequence of early human development and expansion that also negatively impacted white-tailed deer, wild turkeys, and numerous other species that have since recovered due to professional wildlife management efforts.

It has been recently published that the greater Big South Fork bear population had a growth rate of approximately 18.3% from 1998-2012 (Murphy et al. 2015). This is an exceptionally high population growth rate for black bears and one that no bear manager would classify as "modestly recovered". Likewise, the eastern Kentucky bear population continues to expand both in abundance and geographic range.

Genetic research funded by the Department confirms that Kentucky's bear populations arrived here via natural range expansion from West Virginia, Virginia, and Tennessee (Hast 2010, Murphy et al. 2015). Because those neighboring states have such healthy bear populations, a continued influx of bears from those states will offset the limited hunting mortality in the Commonwealth. The proposed amended quota would yield a cumulative annual harvest of 35 bears that includes a maximum harvest of 20 females. It is the Department's position that such a harvest scenario will not pose a threat to the long-term sustainability of bears in Kentucky.

(4) Subject Matter: Proposed regulation changes and research recommendations.

Commenter: Pamela Rogers

1. (a) Comment: Kentucky's new proposed regulation changes will undermine recommendations by the Kentucky's own bear researchers.

(b) Response: Since 2002, the Department has funded 11 years of research and monitoring devoted to the study of Kentucky's black bears. This represents a considerable investment that has yielded valuable data to support the current and proposed structure to the hunting seasons for black bears. In addition, the Department monitors and documents all human-bear conflicts, bear sightings, and mortality events as a means to evaluate the range and expanding occurrence of black bears.

As with all game species, the Department limits harvest levels so as to allow hunting opportunity while preventing overharvest. Research funded by the Department does suggest that bear populations should be protected from high harvest rates (Murphy et al. 2015). The Department is following those recommendations by having an established quota on the number of bears that may be harvested. The proposed changes actually shorten both the archery/crossbow season and quota hunt with dogs season by moving them slightly earlier in the year.

Since 2009, the Department has strategically limited the take of female bears by having seasons that are short in duration and take place late in the year when most females have started to den. This is supported by harvest statistics which reveal that 72.4% of all bears harvested to date have been males. While the current regulatory changes do propose moving the archery/crossbow season from late November to late October, the Department has taken into account the potential for an increased harvest of female bears by shortening the proposed season from 9 to 7 days and removing one weekend from the hunt (the majority of bears have been harvested on weekends). The current proposal to split the bear quota hunt with dogs season includes a shortening of the overall season from 5 to 4 days. Female bears are further protected by the establishment of 3 bear reserves in which all bear hunting is prohibited. These areas serve as critical denning habitat for female bears in Bell, Harlan, Letcher, and McCreary counties. The Department also prohibits the take of female bears with young and imposes a size

restriction of 75 pounds for legal harvest, both of which serve to limit the take of female bears.

(5) Subject Matter: Harmful effects to Kentucky's black bear populations.

Commenter: Pamela Rogers

1. (a) Comment: Kentucky's two black bear populations are still small and two factors could harm them: 1) habitat fragmentation and loss; and 2) hunting and poaching. At least 24 bears have been poached in the preceding two decades.

(b) Response: Classification of Kentucky's bear populations as "small" is subjective without some reference to time or scale. While it appears that bears in the Kentucky have not yet reached the population levels of those in neighboring states, significant population growth is evident over the last decade. Bear sightings documented by the Department have increased from 44 reports in 2004 to 454 reports in 2014. Likewise, the geographic area in which sightings occur exhibited a similar increase from 9 counties in 2004 to 41 counties in 2014. These data indicate that bear movements and range expansion have not been limited by habitat fragmentation or loss in Kentucky over the last decade. While bear populations can be harmed by overharvest, there is nothing to suggest that this is occurring in the Southern Appalachians. State wildlife agencies are using science-based harvest regimes that promote population sustainability.

With regard to poaching, state and federal wildlife agencies throughout the Southern Appalachians work cooperatively and diligently to investigate and seek prosecution for all cases relating to poaching of black bears. From 1994 to 2014, the Department has documented 37 cases of illegal bear kills, which averages to 1.85 bears per year.

(6) Subject Matter: Potential effects of hounding on female bears with young.

Commenter: Pamela Rogers

1. (a) Comment: The commenter opposes the proposal to start hounding earlier in the year when mother bears and their dependent cubs would be made vulnerable to persecution.

(b) Response: The bear chase-only season has always occurred from August 1-31 and the current regulatory amendments contain no proposed changes to these dates. The Department has proposed a change to split the existing 5-day bear quota hunt with dogs season into two 2-day periods that are slightly earlier than the existing season. Those dates propose to move the hunt from the third Monday through Friday period surrounding Christmas to a 2-day period after Thanksgiving and a 2-day period beginning the third Saturday in December. Cooperative research by the Department has documented the onset of denning activity for most female bears to occur during the third week in November. The proposed earlier season(s) for the bear quota hunt with dogs season will still occur after the primary onset of denning, which greatly reduces the potential for

chasing or harvesting of female bears. Existing hunter requirements in 301 KAR 2:300 prohibit a person from harvesting a bear in a den or disturbing a bear in a den for the purpose of taking the bear if it exits the den.

(7) Subject Matter: The allowable number of hounds used in bear chase events.

Commenter: Pamela Rogers

1. (a) Comment: The commenter opposes the allowance of having more than 8 dogs on hand, so that fresh hounds can be rotated into the chase; this is an alarming aberration and not fair chase hunting.

(b) Response: The proposed regulatory change maintains an 8-dog limit for any active bear chase event by a single hunt party. This proposal would allow houndsmen to carry additional dogs that are not actively involved in the chase (for example, dogs kenneled in a vehicle). This measure allows houndsmen to incorporate pups or less experienced hounds into a chase event for training purposes. While new dogs may be added to a chase, houndsmen must collect other dogs in order to maintain the existing 8-dog limit in the field. It is the Department's position that such activity is still in the spirit of fair-chase hunting. Bears have a significant chance for escape in a rugged and remote region of the state by using their keen senses, tremendous endurance, and inherent knowledge of their home range to elude hounds and hunters.

(8) Subject Matter: Expansion of bear chase areas.

Commenter: Pamela Rogers

1. (a) Comment: The commenter opposes the significant expansion of lands, on 25% more acres, upon which dogs would be allowed to menace bears, all other wildlife, and people.

(b) Response: The Department has identified and delineated 3 particular chase/take areas where the use of hounds will be permitted within the 16-county bear hunting zone. The proposed expansion of the Central and Eastern Bear Chase Areas would result in a 21.3% increase in area where houndsmen could pursue bears with dogs. The proposed areas of expansion are within the remote core of Kentucky's eastern bear population that contains low human and road densities. These areas will offer enhanced chase opportunities while minimizing potential for human-related conflict. In an additional effort to prevent user conflict with houndsmen, the Department provides detailed boundary maps of each chase/take zone that available to the public by mail and on the Department website.

Regarding potential effects on non-target wildlife, the August chase season will not occur during peak nesting chronology for ground nesting birds. While the northern bobwhite's nesting season extends into August, the vast majority of bear chasing activity will occur in a forested landscape, where quail do not prefer to nest. Other species, such as deer, elk, and furbearers are adapted to minor human disturbances, and will not be impacted. In

fact, the Department currently allows a year-round chase season with dogs for red foxes, gray foxes, raccoons, and opossums, and those activities have not had a negative impact to non-target species.

Most, if not all, houndsmen now equip dogs with radio-tracking collars that allow handlers to know their whereabouts during chase events. This technology enables houndsmen to identify potential boundary concerns, then locate and collect dogs before trespass issues occur. Likewise, the radio-collar technology allows houndsmen to collect dogs before they reach primary roadways. That measure minimizes potential for vehicle collisions associated with chase events. Potential trespassing issues will not be any different than for any of Kentucky's other hunt and chase seasons. To date, no citations have been issued to houndsmen by the Department Law Enforcement Division staff for trespassing violations during bear seasons.

(9) Subject Matter: Effects of hunting on bear activity patterns.

Commenter: Pamela Rogers

1. (a) Comment: Hunting bears during hyperphagia is energetically costly to them as they shift their sleeping patterns and become more nocturnal to avoid being hunted.

(b) Response: Hyperphagia in bear species refers to a sustained period when animals exhibit dramatic increases in food intake as a means to bolster fat reserves in preparation for denning. For black bears in the Southern Appalachians, hyperphagia generally begins with the ripening and falling of acorns from September to early October, which is after the existing chase-only season in August. During hyperphagia, bears actually feed day and night with most time committed to the procurement of food (Nelson et. al 1980). Consequently, the act of becoming nocturnal is normal during the fall when most bear seasons occur. The longest continuous bear season will last a maximum of only 7 days, followed by a separate 3-day modern gun season and two 2-day quota hunts with dogs season. This conservative season structure is not long enough to significantly influence bear activity patterns as it relates to acquisition of food in preparation for denning.

(10) Subject Matter: Physical effects of chasing bears in hot weather.

Commenter: Pamela Rogers

1. (a) Comment: Pursuit during hot weather can cause physical stress to both dogs and bears.

(b) Response: The use of hounds to chase and hunt black bears has a long-standing tradition in the Southern Appalachians and is an outdoor pursuit that is legally permitted in Kentucky, North Carolina, Tennessee, Virginia, and West Virginia. Certain breeds of hounds are specifically used for the pursuit of bears and these dogs are bred to chase, rather than attack bears and risk injury to valuable hounds. Houndsmen select for breeds and individuals that excel in the recognition of bear scent and ability to engage in

successful chase events. Conversely, behavioral traits of dogs that result in physical interactions with bears and promote injury are, therefore, counterintuitive to the long-term success of houndsmen. The August chase-only season in Kentucky, like chase-only seasons in other states, serve to get seasoned bear hounds into good physical condition and incorporate pups and younger dogs into chase events as a training exercise.

During chase, bears use their keen senses, tremendous endurance, and inherent knowledge of their home range to elude hounds. Furthermore, bears are accustomed and adapted to the rugged terrain of the Southern Appalachians.

(11) Subject Matter: Separation of family units when chasing with hounds.

Commenter: Pamela Rogers

1. (a) Comment: If bayed on the ground, hunters cannot identify the sex of the bear, which is a concern if it is a female with dependent cubs.

(b) Response: The annual quota for Kentucky's bear quota hunt with dogs season is only 5 bears, which is a conservative limit set by the Department. The proposed date change for the bear quota hunt with dogs season means the earliest possible season would begin the weekend after Thanksgiving. Extensive tracking of radio-collared bears indicates that most females have denned by the week of Thanksgiving. The majority of bear harvest with dogs is projected to consist of male bears. This same principle applies to Kentucky's modern gun season for bears which occurs after the primary onset of denning; to date, 75% of all bears harvested during this season have been males.

(12) Subject Matter: Hunting and human-bear conflicts.

Commenter: Pamela Rogers

1. (a) Comment: Hunting does not resolve human-bear conflicts, nor does hunting increase tolerance for bears.

(b) Response: The Department agrees with this comment. Since inception of Kentucky's first bear hunting season in 2009, the Department has maintained that implementation of a hunting season is not a management technique for alleviating human-bear conflicts. The majority of human-bear conflicts are the result of access to human-related foods such as garbage or pet food. Consequently, any human safety concerns can be largely eliminated by removing food attractants. Even if hunting mortality accounts for the removal a food-conditioned bear or bears, the problem will resume if food attractants remain available. Hunting will not provide a long-term resolution for most conflict issues.

The Department employs a statewide black bear biologist, 5 private lands wildlife biologists, 3 program wildlife biologists, and 2 wildlife technicians in eastern Kentucky who all provide sound technical guidance to landowners experiencing conflicts with bears. The Department uses public education, technical guidance, nonlethal aversive

conditioning, capture and relocation, and euthanasia as management tools for successfully addressing human-bear conflicts. Ultimately, adherence to sound management recommendations and public responsibility will minimize human-bear conflicts and promote social acceptance of bears.

References:

Hast, J. T. 2010. Genetic diversity, structure, and recolonization patterns of Kentucky black bears. Thesis, University of Kentucky, Lexington, KY, USA.

Murphy, S. M., Cox, J. J., Augustine, B. C., Hast, J. T., Gibbs, D., Strunk, M., Dobey, S. T. 2015. Rapid growth and genetic diversity retention in an isolated reintroduced black bear population in the Central Appalachians. *Journal of Wildlife Management*, in press.

Nelson, R. A., Folk, G. E., Pfeiffer, E. W., Craighead, J. J., Jonkel, C. J., Steiger, D. L. 1980. Behavior, biochemistry, and hibernation in black, grizzly, and polar bears. *International Conference on Bear Research and Management* 5: 284-290.

Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The public hearing on this administrative regulation was cancelled; however, written comments were received during the public comment period. The Kentucky Department of Fish and Wildlife Resources responded to the written comments above and will not be amending 301 KAR 2:300. Specifically, this amendment will offer additional recreational opportunity for bear hunters, it will not negatively impact the sustainability of bear populations, and several restrictions have been put in place to minimize user conflicts.